

Date of Hearing: January 14, 2020

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1263 (Low) – As Amended January 6, 2020

SUBJECT: Contracts: consumer services: consumer complaints.

SUMMARY: Prohibits a contract involving the provision of a consumer service by a licensee regulated by a licensing board from including a provision limiting the consumer's ability to file a complaint with that board or to participate in the board's investigation into the licensee.

EXISTING LAW:

- 1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Provides that the DCA is comprised of thirty-seven licensing boards, bureaus, committees, and commissions, each responsible for regulating various professionals. (BPC § 101)
- 3) Provides that all boards within the DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (BPC § 101.6)
- 4) States that it is the duty of the Director of Consumer Affairs to receive complaints from consumers concerning violations of provisions of this code relating to businesses and professions licensed by any agency of the DCA. (BPC § 325)
- 5) Establishes the State Bar of California as the entity responsible for regulating legal professionals. (BPC §§ 6000 *et seq.*)
- 6) Establishes the Department of Real Estate as the entity responsible for regulating real estate professionals. (BPC § 10000 *et seq.*)
- 7) Provides that certain contracts are unlawful if contrary to an express provision of law; contrary to the policy of an express law, though not expressly prohibited; or otherwise contrary to good morals. (Civil Code (CIV) § 1667)
- 8) Prohibits a contract or proposed contract for the sale or lease of consumer goods or services from including a provision waiving the consumer's right to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or services, with any waiver of that prohibition contrary to public policy, and unenforceable. (CIV § 1670.8)

THIS BILL:

- 1) Prohibits a contract or proposed contract involving the provision of a consumer service by a licensee regulated by a licensing board from including a provision limiting the consumer's ability to file a complaint with that board or to participate in the board's investigation into the licensee.

- 2) Provides that any waiver of that prohibition is contrary to public policy, and is void and unenforceable.
- 3) Defines “consumer service” as any service which is obtained for use primarily for personal, family, or household purposes.
- 4) Defines “licensing board” as any entity under the DCA, the State Bar of California, the Department of Real Estate, or any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.
- 5) Provides that violation of the bill’s provisions by a licensee shall constitute unprofessional conduct subject to discipline by the licensee’s licensing board.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author:

“When consumers are defrauded or injured by those who have received special privileges by the state, they rely on our regulatory boards to ensure that the public is protected and victims are made whole. However, it has recently come to light that certain unscrupulous businesses have sought to circumvent these safeguards by requiring their customers to sign contracts waiving their right to notify boards of misconduct. This bill would make it absolutely clear that such contractual provisions unacceptably undermine our state’s consumer protections and are contrary to law.”

Background.

During the 2019 sunset review of the Dental Board of California by the Senate and Assembly Committees on Business and Professions Committee, it was uncovered that certain companies offering direct-to-consumer orthodontics products were providing dental services using a lesser standard of diagnostic review than traditional dental offices. Presumably as a way of preventing consumers from making complaints about any adverse outcomes relating to this service model, one of the larger companies was requiring customers who sought a refund to sign an agreement that they would not disparage the company. The agreement was intended to be kept confidential and required the patient to promise not to “make public, disseminate, release or otherwise reference, allude to, suggest to any person, agency or other entity ... the terms or existence of this General Release.”

Effectively a non-disparagement agreement, the company’s release barred patients from being allowed to “make, publish, or communicate any statements or opinions that would disparage, create a negative impression of, or in any way be harmful to the business.” Further, the agreement required patients to promise that they would not “file, commence, maintain, or prosecute any lawsuit, complain, charge, or proceeding of any kind.” It has been established that this language is broad enough to constitute a prohibition against the patient making a complaint to the Dental Board, as well as restrict the patient’s ability to cooperate with a board investigation.

Existing law has already been enacted with the intent to prohibit non-disparagement clauses in consumer contracts. This bill has been introduced in response to the author's determination that companies providing professional services are nevertheless seeking to restrict their customer's authority to make substantiated complaints to regulatory boards through refund agreements and other contracts. This bill would expressly prohibit these provisions in any contract governing the provision of professional services that are subject to licensure and oversight by the state.

Prior Related Legislation. AB 1519 (Low, Chapter 865, Statutes of 2019) specifically prohibits providers of dental services from requiring a patient to sign an agreement that limits the patient's ability to file a complaint with the board.

AB 2365 (Pérez, Chapter 308, Statutes of 2014) prohibits a contract or proposed contract for the sale or lease of consumer goods or services from including a provision waiving the consumer's right to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or services.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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